

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAYE L. ELLEBY,

Petitioner,

20 Civ. 2935 (PAE)

v.

ORDER

BRANDON J. SMITH, *Superintendent of Greene
Correctional Facility,*

Respondent.

PAUL A. ENGELMAYER, District Judge:

On April 9, 2020, petitioner Taye L. Elleby filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, seeking release from custody to home confinement due to the current pandemic. On May 22, 2020, the Court dismissed Elleby's petition, without prejudice, because he had failed to exhaust his state remedies. Dkt. 12.

On July 18, 2020, the Court received the attached letter from Elleby. The Court construes the letter as a motion to reconsider its May 22, 2020 ruling. Elleby represents that he has filed four motions with the New York County Supreme Court and the First Department of the Appellate Division, but he has not yet received a decision on any of the motions. The filing of these motions is insufficient to exhaust Elleby's claims. *See Curry v. Burge*, No. 03 Civ. 0901 (LAK), 2003 WL 21230625, at *1 (S.D.N.Y. May 22, 2003) (existence of pending state proceeding indicated that petitioner had not exhausted his claims). Remedies are still available in state court, and, as observed by Chief Judge McMahon, the justices of the New York State Supreme Court have heard—and granted—many petitions related to the impact of COVID-19 on conditions of confinement. *Bergamaschi v. Cuomo*, No. 20 Civ. 2817 (CM), 2020 WL 1910754,

at *4 (S.D.N.Y. Apr. 20, 2020). That Elleby would like his state-court proceedings to be resolved more quickly does not present a reason to excuse his lack of exhaustion. *See Cuevas v. Pennsylvania*, 19 Civ. 1733 (SHR), 2020 WL 1911511, at *3 (M.D. Pa. Apr. 20, 2020) (declining to excuse exhaustion requirement for COVID-19-related pretrial habeas claim, even though petitioner was “displeased with the pace of his state-court proceedings”).

Accordingly, the Court denies Elleby’s motion for reconsideration and reaffirms its May 22, 2020 opinion dismissing Elleby’s petition without prejudice. The Clerk of Court is directed to mail copies of the June 8, 2020 order, Dkt. 16, and this order to Elleby.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: July 20, 2020
New York, New York

Rec'd 7/18/20
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Date: 7-11-20

20CV2935 (ME)

Dear Judge Paul A. Engelmayer,

I understand that you have a very busy schedule so respectfully I ask for your attention briefly.

Sir I've been placing motions and petitions in the Court for the Supreme Court New York County, as well as the Appellate Division and the Clerk nor judge's respond to my motions forwarded them.

This was one of the reasons why in a petition for writ of habeas Corpus no answers to these motions caused the judge to rule the claims were unexhausted. Sir I even asked the Court that determined my habeas for a stay while motions that were placed were answered although they ain't grant such my point is that I still have not received any answers to almost four (4) different motions all to which were forwarded the Supreme Court NY County and the Appellate division First department.

I'm being denied access to the Courts and denied due process of law and Sir to be truthful I really don't want to go against the powers that be unless this problem can't be resolved. I have pink slips in my possession from my facility showing these transactions were made and return receipts or in alternative I have the facility verify that motions were sent to the Court and Clerks. Sir My indictment No. #02135-2013 I can prove as well as the facilities I've been in can prove this deliberate indifference.

So please Sir in your mercy instruct your Clerk to let me know what to do next because I don't want to sue then get blackballed everytime I litigate.

Thank you Sir!

Sincerely Tony L. Elbe

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Greene Cor, Fac.

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Coxsackie NY 12051-0975

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Atto: Hon. Judge Paul A. Engelmayer
U.S. District Court (S.D.N.Y.)
500 Pearl Street
New York, NY 10007

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